

WISHA REGIONAL DIRECTIVE

WISHA Services

Department of Labor and Industries

32.15 Diving Search & Rescue

Date Issued: April 16, 2004

I. Background

Questions are periodically raised about the application of the Diving Standard (Chapter 296-37 WAC) to diving activities conducted or coordinated by local governments, including law enforcement, firefighting, and public safety agencies.

The source of the confusion is two-fold. Some readers of the standard are misled by the phrase “commercial diving” in its title to believe that the standard applies only to profit-making enterprises. In addition, the exemption in WAC 296-37-510(2)(b) for “search, rescue or related public safety purposes” has at times been incorrectly read as providing a broad exemption to all governmental diving activities, as well as to governmental search and rescue activities not related to diving.

Although the term “search and rescue” (SAR) is not defined in the standard itself, well-established definitions exist within the industry. In the National Search and Rescue Plan, the U.S. Coast Guard (USCG) defines SAR as “the employment of available personnel and facilities in rendering aid to persons and property in distress.” To further clarify the issue, the USCG considers SAR operations to be deactivated when the survivor is delivered to a position of treatment or safety, *or when there is no longer hope for rescue*.

It is also worthy of note that the exemption in the WISHA standard is based on identical language in the federal standard, adopted by the Occupational Safety and Health Administration (OSHA). Because OSHA does not exercise jurisdiction over local government (although state plans such as WISHA are required to do so), the language in the standard was not originally intended to address the public sector – rather, it was intended to relieve private sector employers who were supporting active SAR activities of the strict obligations of the standard for the duration of those activities.

II. Scope and Application

This WISHA Regional Directive (WRD) applies to all WISHA enforcement and consultation activities involving the application of Chapter 296-37 WAC to the public sector (or to private employers involved in search and rescue, including those acting in support of the public sector). It replaces any previous guidance on the subject, whether formal or informal.

III. Interpretive Guidance

A. Does Chapter 296-37 WAC apply to activities by governmental agencies?

Yes. Although the phrase “commercial diving operations” used in the title of the standard may be somewhat confusing (and will be corrected), the language of the standard itself is quite clear. WAC 296-37-510(1) states that the standard “shall apply throughout the state wherever diving takes place within the jurisdiction of the department of labor and industries.” WAC 296-37-510(1) states that the standard “applies to diving and related support operations conducted in connection with all types of work and employments. . .” with the exception of several specific, listed exemptions. Unless the activity falls within one of those specific exemptions, the activity of any employee who dives is covered by the standard.

B. To what extent are government operations or other “search and rescue” operations exempt under WAC 296-37-510(2)(b)?

The exemption must be read in the context of the phrase “search and rescue.” Employers who engage in diving activities beyond search and rescue – in other words, after there is no longer hope for rescue – are covered by the standard. SAR does not include the recovery of bodies of victims, the search for bodies, the search for evidence, retrieval of bodies or evidence, or other activities that are *not* time-sensitive in nature and not *directly* related to the SAR activities.

Employers who engage in SAR typically also engage in at least some other activities covered by the standard; in such cases, WAC 296-37-510(2)(b) does *not* provide an exemption to training requirements, safe practices manual requirements, and other requirements that precede the actual diving activity.

It should also be noted that the exemption in WAC 296-37-510(2)(b) does *not* exempt SAR diving operations from general requirements such as those found in WAC 296-800-11010, particularly the requirement to “provide and use safety devices, safeguards, and use work practices, methods, process, and means that are reasonably adequate to make your workplace safe.”

Given the inherent risks of certain SAR activities, the key requirement is the statement that “every employer shall do every other thing reasonably necessary to protect the life and safety of employees.” The general training requirements found in WAC 296-800-14020 would also be relevant in many cases.

C. Are other, non-diving SAR activities performed by local governments exempt from WISHA requirements?

No. To the extent there are specific requirements (for example, those found in the Firefighters Standard (Chapter 296-305 WAC)), those apply in accordance with any limitations found in the standards themselves. And all SAR activities not subject to specific regulation would remain subject to the requirements such as those of WAC 296-800-11010, including the requirement to “do everything reasonably necessary to protect the life and safety of your employees,” as well as the general training requirements found in WAC 296-800-14020.

Application of these requirements to law enforcement activities is addressed in more detail in WRD 32.00.

IV. Operations Protocols

WISHA enforcement and consultation staff who apply the Diving Standard (Chapter 296-37 WAC) to local government activities are expected to follow the interpretive guidance in Section III above and to apply, as appropriate, the operational protocols found in WRD 32.00.

Approved: _____
Dan K. McMurdie, Acting Senior Program Manager
WISHA Policy & Technical Services

For further information about this or other WISHA Regional Directives, you may contact WISHA Policy & Technical Services at P.O. Box 44648, Olympia, WA 98504-4648 or by telephone at (360)902-5503. You may also review policy information on the WISHA Website (<http://www.wa.gov/lni/safety/>).